

1 IN THE DISTRICT COURT
2 IN THE NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND, CALIFORNIA
4 OAKLAND, CALIFORNIA; DEPT 3; WAYNE D. BRAZIL, JUDGE
5 MCKESSON CORPORATION,) 07-5125 WDB
6) MARCH 12, 2008
7 PLAINTIFF,)
8 V.)
9 FAMILYMEDS GROUP, INC. }
10 DEFENDANT.)
11 _____)

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

13 APPEARANCES:

14 FOR THE PLAINTIFF:

15 HENDERSON CAVERLY, LLP
16 BY: MARIA K. PUM,
KRISTEN CAVERLY, ATTORNEYS AT LAW
17 P.O. BOX 9144 (ALL US MAIL)
16236 SAN DIEGUITO ROAD, SUITE 4-13
RANCHO SANTA FE, CA 92067
18 TEL (848) 756-6342 FAX (858) 756-4732

19 FOR THE DEFENDANT:

20 JEFFER MANGELS BUTLER & MARMARO, LLP
21 BY: ROBERT C. GEBHARDT,
MATTHEW S. KENEFICK, ATTORNEYS AT LAW
TWO EMBARCADERO CENTER, FIFTH FLOOR
22 SAN FRANCISCO, CALIFORNIA 94111-3824
TEL (415) 398-8080 FAX (415) 398-5584

23
24 REPORTED BY: STARR A. WILSON, CSR 2462
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1 OAKLAND, CALIFORNIA; WEDNESDAY, MARCH 12, 2008; 3:00 P.M.,
2 DEPARTMENT 3; WAYNE BRAZIL, JUDGE

3 -oOo-

4 **THE CLERK:** All rise.

5 **THE COURT:** Good afternoon, folks. Please be
6 seated.

7 So we have one person appearing by phone; is that
8 correct?

9 **MS. CAVERLY:** Yes, your Honor. Kirsten Caverly on
10 behalf of McKesson.

11 **THE COURT:** Thank you.

12 So let me ask. Let me call the case and ask the
13 lawyers who are here in person to announce their appearances
14 for the record.

15 The case short style is McKesson versus Familymeds
16 Group. Um, it's civil action number 07-5715 WDB.

17 Starting with counsel for McKesson, local for San
18 Diego or whatever, announce their appearance, please.

19 **MS. PUM:** Maria Pum of Henderson & Caverly on
20 behalf of McKesson corporation.

21 **THE COURT:** Okay.

22 **MR. GEBHARDT:** Bob Gebhardt and Matthew Kenefick
23 for the firm of Jeffer, Mangels, Butler & Marmaro for
24 Familymeds Group and Familymeds, Inc.

25 **THE COURT:** Okay. Thank you.

1 Let me start actually by making sure I've got this
2 right. Is it -- is it Ms. Caverly who is on the phone?

3 **MS. PUM:** That's correct, your Honor.

4 **THE COURT:** Okay. Good.

5 Let me start over. By addressing the protective
6 order that you folks have proposed, um, my clerk noticed
7 that the proposed protective order tracks, at least
8 substantially, the court's model rule but leaves out what is
9 in the model rule, paragraph 5.1, which deals with the
10 exercise of restraint and care and designating material for
11 protection.

12 Is there some reason you folks don't want to do
13 that?

14 **MS. PUM:** Your Honor, Maria Pum.

15 Um, there, the answer to the question is no, there
16 is not some reason we want to do that, your Honor, except
17 that when I got the initial draft from Mr. Kenefick, it was
18 not in the proposed form that he sent me and I assumed he
19 didn't want it in there and I didn't mind it being out. So,
20 in my view, it was a compromised that if he wanted it out,
21 that was not something that I was going to insist be in
22 there.

23 **THE COURT:** Do you folks disagree with that?

24 **MR. GEBHARDT:** I didn't know anything about that.
25 But in my estimation, it ought to be in there.

1 **THE COURT:** Okay. Well, would you do me a favor?
2 I don't want to impose on your clients. But the -- the
3 concept that's in that paragraph is both necessary under law
4 and necessary for the protection of your client's
5 pocketbooks so I assume it was an inadvertence.

6 **MR. GEBHARDT:** I think it was inadvertent, your
7 Honor.

8 **THE COURT:** So if you folks would just resubmit
9 the thing. Just, it is presumably in your computers and you
10 can take five minutes to add the paragraph. Then I'll be
11 happy to sign it in the hope that it lubricates the process
12 and it keeps your budgets a little less fat.

13 Um, now, let's -- let's -- I want to talk about
14 the substance of the motion obviously before we get to the
15 formalities of case management.

16 But I -- I say the formalities because I'm very
17 nervous generally, by the way, not specific to anything in
18 your case, or even my job. Um, but I'm nervous that there
19 might well be a whole lot of money spent on you folks that I
20 realize you have to make a living, but might be a lot of
21 money spent on you folks that ends up being not
22 overwhelmingly productive.

23 And I should say that I had a case dissimilar in
24 many significant ways to this, sometime over the horizon,
25 but not actually that one though, but in the last couple of

1 years, which was vaguely similar.

2 There was a major national corporation that had
3 been supplying, um, supplies to a physician's group. This
4 was on a cancerous practice situation. And they fought back
5 and forth, in the court's disinterested view, meaning it
6 wasn't going to cost me any money no matter what happened.
7 But they fought in a way that wasn't a very handsome
8 reflection on the profession. But, more importantly, ended
9 up wasting their client's money. It was basically an
10 accounting case. Everybody agreed that certain -- that some
11 medical stuff had been supplied and that some money was
12 likely owing, but they had all these sort of peripheral
13 fights that just really -- it just felt bad. It felt like,
14 gee, this is why our profession isn't very handsomely
15 regarded.

16 Um, and so when I read what this case seems to be
17 about, I got nervous again saying, oh, my goodness. Here,
18 we have these two big law firms, both presumptively
19 competent, with people. Oh, you know, three-quarters of a
20 million dollars isn't peanuts. But you guys can spend that
21 in about half a year. I'm being a little bit facetious but
22 not entirely. Um, so what -- what occurs to me is that why
23 don't you get some experts or some people in whom there's
24 some confidence about their neutrality, go through the
25 papers, and settle the case. Is there some reason not to do

1 that?

2 **MR. GEBHARDT:** You're looking at me.

3 **THE COURT:** Well, I don't care. I'm looking at
4 anybody. I'm looking at you as a community.

5 **MR. GEBHARDT:** It makes imminent sense. I mean
6 we've -- we've retained an expert who has dealt with drug
7 companies and these millions of -- of papers that -- that
8 are generated. And, um -- and we're willing to -- I have no
9 authority for this, but I'm willing to recommend that we
10 share him. They ought to know about him, to go in and look
11 and see if, indeed, we've been charged the right amount.
12 Because what -- what you got is a situation where the drug
13 McKesson, that's big. They -- they supply three to five to
14 ten million dollars a week of -- of material to us and
15 people like us.

16 For people like us to say, "Hold on a second. The
17 lipstick that you sent us, I think we ought to get a
18 discount on that", I mean it's going to mess up the whole
19 works. But now we're at an end. And we have information
20 that there may have been some discounts to which we're
21 entitled that we didn't get.

22 So you're right. This is an accounting. We're in
23 favor of that. I'm willing to recommend -- I'm going to
24 tell my client what you said and recommend to them that we
25 share with them this expert who's, like I said, been through

1 it. And maybe if we get access to their documents, maybe
2 our fears are unfounded and which case we'll go away.

3 But maybe if our fears aren't found -- are
4 genuine, then possibly --

5 **THE COURT:** There could be, you know, apparently
6 McKesson feels, not only that they're owed the seven
7 and-a-quarter or whatever it is, but also, and I don't know
8 frankly -- you can sit down. Thank you.

9 Yeah, I don't know what the play between these
10 things is. But McKesson also is thinking, gee, they're not
11 entitled to the discounts they got. Or there's some --
12 there's some play in these accounting joints that might even
13 move the number up. I don't know about that.

14 I don't -- I don't feel a need to know about that
15 right now. But I feel a need to feel is common sense, good
16 business judgment, and good faith. And I see these motions
17 and I see all this horsing around, frankly, and -- and I
18 don't like it.

19 Now, you don't, you know, you don't have to do
20 what I like or don't like. You only have to do what I order
21 consistent with the law. And I can't order that. Well, I
22 don't think I can order it. But it seems to me that given
23 what I saw somewhere, \$170 million in total or something as
24 an environment in which we're working and we're talking
25 about three-quarters of a million, so we're talking about

1 less than a half of a percent or something like that.

2 Um, it seems to me that -- that it's really
3 important for your clients, especially if they have an
4 ongoing relationship which --

5 **MR. GEBHARDT:** Not any more.

6 **THE COURT:** Okay. Well, that takes that card off
7 the table.

8 But just how about being -- trying to be good
9 citizens and being responsible to their shareholders. Um,
10 just get a plus or minus 20 percent and move on.

11 Um, now, I know you, I'm not assuming anything.
12 I'm going to let you talk here in a second.

13 What I do want you to hear from me before you talk
14 is that -- is that I recognize that there is a considerable
15 amount of instinctive paranoia about using someone that
16 someone else suggests. And if there isn't any, great.
17 Wonderful.

18 But if there is that kind of paranoia, it is
19 not -- the only option is not to use somebody that defense
20 suggests, but instead we could find some completely
21 uncontaminated by ever being connected with anybody. And we
22 need -- we need someone who can read the computer stuff that
23 you guys have and say, okay, this makes sense. And to whom
24 both of you can make civilized sitting-down-at-a-table
25 pitches about well, here's -- here are the circumstances

1 under which these discounts obtain. Here are the
2 circumstances under which they don't. Listen to that and
3 say, okay, he's not the judge or she's not the judge saying
4 well, here's what I think the numbers ought to be. And then
5 you settle the case. And if you don't settle the case, then
6 we fight about who's on first base.

7 **MS. PUM:** Thank you, your Honor.

8 Um, the reason we're not settling this case, your
9 Honor, is because their clients won't pay. We have a
10 contract that indicates that if we send them an invoice,
11 they are supposed to pay the invoice amount. And if they
12 dispute any amounts that are on that invoice after the fact,
13 they can come back and make a claim. They can even try to
14 make some suggestion that there is a mistake beforehand.

15 And we offered to talk to them about whatever
16 mistakes they think there were, but they couldn't come up
17 with a single example of a mistake.

18 They have come up -- this is pure fantasy on their
19 part, your Honor. When we got to the end of the
20 relationship, there was \$725,000 left owing. They just
21 simply refused to pay.

22 The contract says they must pay it. And if they
23 have some issue or offset right, they have to come back
24 after the fact and make that claim. But they have to pay up
25 front.

1 **THE COURT:** When you said pay up front, you said
2 that they could talk to you beforehand.

3 **MS. PUM:** Oh, we're always willing to talk to them
4 but they still have to pay their invoice. And we did talk
5 to them beforehand. We asked them, give us an example.
6 They could not come up with an example.

7 Your Honor, I've come to learn a lot more about
8 how this -- this ordering process works.

9 Every single time a pharmacist anywhere around the
10 country that is, you know, in the Familymeds Family makes an
11 order, say, for a box of aspirin or something, they get an
12 invoice for that, you know, that one order so there's
13 hundreds of thousands of orders.

14 But every time they have that invoice, they have
15 access to a computer terminal that they can go on what's
16 called the supply management online system, the SMO system.
17 They can go on there and they can look up, see what invoices
18 are open, what they've paid. They can go through and click,
19 pay this invoice. Pay this invoice.

20 **THE COURT:** Who are they that you're talking
21 about?

22 **MS. PUM:** Familymeds.

23 **THE COURT:** The pharmacists?

24 **MS. PUM:** Family -- Familymeds or the pharmacists
25 or whoever has the purse strings. I don't really know the

1 Familymed side of the equation. But in principle, um,
2 anyone on the Familymeds side can go through and pick
3 invoices to pay.

4 So they know all along, through this entire
5 \$170 million relationship, how much they're being picked --
6 they're being charged for every piece of -- every aspirin,
7 everything they're getting.

8 Only at the very end of this relationship, when
9 finally McKesson said, "Hey, you stopped paying us on
10 September 14. What's up?"

11 And they said, "We've decided we're not going to
12 pay you any more".

13 And McKesson said, "Well, why aren't you going to
14 pay us any more?"

15 They had basically sold their last two stores.
16 They didn't really need to order anything more from
17 McKesson. They dug their heels in and said they weren't
18 going to pay any more.

19 Then they come -- concocted with a cock and bull
20 story -- pardon me, your Honor -- about how there were
21 mistakes in the pricing to Familymeds. And now we need to
22 look at the entire relationship, not just between McKesson
23 Corporation and Familymeds Group, but also going into the
24 years before that between Familymeds, Inc., and an entity
25 that was subsequently purchased by McKesson, which was D&K

1 Health Care. So they're trying to drag in all these other
2 purchases.

3 **THE COURT:** Let me just ask you.

4 **MS. PUM:** I'm sorry.

5 **THE COURT:** Did D&K Health Care, was it a supplier
6 before McKesson? Was it -- was it a supplier before
7 McKesson joined the relationship?

8 **MS. PUM:** Yes, your Honor.

9 **THE COURT:** So was -- was McKesson functioning at
10 all? I know it was functioning out there in the world. Was
11 McKesson also a supplier at that time or was it all D&K?

12 **MS. PUM:** It was not a supplier to FamilyMeds.

13 **THE COURT:** That's what I mean.

14 **MS. PUM:** Yes. They were completely separate
15 relationships.

16 **THE COURT:** Well, let me ask -- I hear what you
17 say and I feel the heat on. I don't have any reason to
18 quarrel or not. But I -- I'm not sure that it --

19 **MS. PUM:** Your Honor, I apologize for the heat in
20 my tone.

21 **THE COURT:** Oh, that's okay.

22 **MS. PUM:** I --

23 **THE COURT:** I get it all the time.

24 **MS. PUM:** Okay.

25 **THE COURT:** It's part of the program. I had that

1 heat this morning for a US attorney. But I'm not sure --
2 what I -- what I hear you saying is by implication --
3 fellows, listen up, please.

4 **MR. KENEFICK:** Sorry, your Honor.

5 **THE COURT:** What I hear you saying by implication
6 is there's no chance we're wrong about anything and we don't
7 want any review about anything and that strikes me as
8 possible but --

9 **MS. PUM:** No -- no --

10 **THE COURT:** -- not -- not necessarily inevitable.
11 Um, and what I'm suggesting is why don't you guys sit down.
12 Maybe you don't need an expert. Maybe you sit down as human
13 beings, God forbid, and say, "Okay, here's -- look, bring in
14 Joe Schmo from McKesson who knows, if necessary, G&K.
15 Hopefully not. Bring in somebody from McKesson who knows
16 all about these billings and forms and -- and when the
17 entitlements for discounts mature and so forth. And say
18 "Look, Mr. Lawyer for group or Inc. or whoever you're
19 lawyering for, "Here's why you owe us this money". And
20 then -- and then listen to what they say. And if at the end
21 of that, they can't, with their little person -- I don't
22 mean little person -- their person who knows all about this
23 little stuff, that item by item, as you say, it's little
24 stuff, their person who knows all about that and says, oh,
25 no, no, no. If they can -- if it's babbling at that point,

1 this is just baloney. It's just -- there's nothing to this.
2 Then you come back, you guys come back and we fight about
3 it. But -- but the point is, it -- it -- it just doesn't
4 seem, it's possible that the only motive on their side is
5 escape from a -- from a real economically obligation and pay
6 the lawyers a couple hundred grand to see if you can escape.
7 Okay. That's possible. But this -- but I'm reluctant just
8 to assume that.

9 **MS. PUM:** Your Honor, I'm not asking the court to
10 assume that. Your Honor, what I'm -- and my point about the
11 individual item by item and their ability to get on the
12 computer and check is had there been a genuine dispute at
13 any point during the relationship up until the very end of
14 it, they would have raised it.

15 **THE COURT:** No. No. No. That's a non secateur.
16 Sometimes people don't figure things out until late.
17 Seriously. I mean you're smiling like everybody in the room
18 is a crook. Come into my morning calendar and I'll show you
19 some crooks.

20 **MS. PUM:** The -- the -- the --

21 **THE COURT:** It's possible that they're crooks.
22 Totally possible. It's also possible that they're harshly
23 inept. They didn't comply with some of the contract. They
24 didn't do it in a timely way. But they see now, holy cow,
25 we -- we -- we -- we got overcharged for this or they see it

1 now. If that's the way it is, they violated the contract.
2 And say, "Okay, you violated the contract."

3 Now, speaking in McKesson's voice, I see, with the
4 benefit of my sight, and you're doing this wholeheartedly
5 that you really only owe us \$500 instead of seven and a
6 quarter. Because you're late, you pay us 400 and we go
7 home. What's wrong with something like that? If it's
8 totally impossible, then -- then I think you're not
9 connected with the real world.

10 I work for the federal government, which is a
11 very, um, imperfect institution. There is no such thing
12 though, no matter how much money your CEO makes, there is no
13 such thing as a perfect institution. And it staggers my
14 imagination that -- not their tardiness, and perhaps
15 breaching the contract, but that you're perfect and they got
16 it all right.

17 **MS. PUM:** Your Honor, I don't know that McKesson
18 is perfect and I'm not --

19 **THE COURT:** No, you do know. It's not.

20 **MS. PUM:** And I'm not -- and I'm not arguing that
21 they are perfect. What I am saying is we have a contract
22 that says that -- no, no, your Honor. Please hear me out.
23 That says they must pay the invoice amount. If, after they,
24 you know, pay the invoice amount and comply with the
25 contract, they think they have a dispute or an issue, then

1 they can bring it up with us. But it is not a condition to
2 their obligation to pay that they pay that amount. And that
3 there isn't -- that there is no question --

4 **THE COURT:** So the actually structured recourse is
5 to pay first and then we'll give you the money back if we're
6 wrong.

7 **MS. PUM:** Yes, your Honor.

8 **THE COURT:** Okay.

9 **MS. PUM:** Unlike FamilyMeds, your Honor, McKesson
10 isn't going anywhere. And that's the second point I want to
11 make, your Honor. FamilyMeds doesn't -- isn't operating any
12 more. As of December 31 they closed their doors.

13 **THE COURT:** No. No.

14 **MS. PUM:** So if we don't do this now, your Honor.

15 **THE COURT:** There is no successor in interest?

16 **MS. PUM:** There is nobody, your Honor.

17 **THE COURT:** All right.

18 **MS. PUM:** I would love to hear otherwise, your
19 Honor. But if we don't do this now, your Honor, and if we
20 don't cut to the chase right away, which is why we had to
21 bring the lawsuit, we will see no money. And we have some
22 concerns about that now, your Honor. But be that as it may,
23 this is not a situation where there will be somebody there
24 to pay from the FamilyMeds side if we let this linger.

25 **THE COURT:** But why -- I'm not sure that that

1 sense of economic urgency cuts against what I'm suggesting.
2 Why can't you do, in the next three weeks, what I'm
3 suggesting? And see if you can guys can figure it out?
4 Let's say that they're on the verge of floating off into the
5 bankruptcy sunset. Um, it seems to me that -- that -- that
6 there's a duty by the people who, um, represent McKesson to
7 get as much money for the shareholders as they can. And it
8 seems to me that one way to do that would be to say, okay,
9 let's get our 400 or 500 or even our seven and a quarter now
10 by going through this little process, spending less on us,
11 being the lawyers, get as much as we can, and move on,
12 especially if these guys are, um, these guys being group or
13 Inc. or whoever they are, are, um, if there's a danger that
14 they're going to disappear as -- as a pocket.

15 **MS. PUM:** Well, your Honor, we were perfectly
16 willing to go to early mutual evaluation.

17 **THE COURT:** Right.

18 **MS. PUM:** And to do some of these other
19 procedures. We were told by the Familymed side that, no, we
20 need to do six months --

21 **THE COURT:** I know --

22 **MS. PUM:** Six months -- six months of discovery.

23 **THE COURT:** Yes. That's too long. That's too
24 long.

25 **MS. PUM:** And then we can start talking about

1 settling.

2 **THE COURT:** That's not going to happen.

3 **MS. PUM:** When I served this complaint, the first
4 thing I was expecting to receive was, okay, you sued us now.
5 How about we pay x and you go away. That offer never came.
6 This -- this -- this litigation, your Honor, is entirely
7 because they want to stall. And if I hear anything
8 contrary, I would be more than pleased, your Honor.

9 **THE COURT:** Okay. All right. How about this? I
10 hear what you're saying. Let's stop there.

11 **MS. PUM:** Go ahead.

12 **THE COURT:** You guys are going to have a month.
13 I'm ordering right now. You guys have a month. You figure
14 out between yourselves, you are all smart people. You
15 figure out, okay, what's the quickest cleanest way to -- for
16 each of us to learn from the other what the basis is for
17 these differences of view? And -- and I think what it means
18 is you get somebody who is a lot smarter than I am and knows
19 these computer systems and sits down with you guys and
20 you -- not, I don't want some outside expert. What I don't
21 want is so important.

22 What you need to do is get somebody say, okay, you
23 tell me in English, Mr. Computer genius, what does all this
24 mean and how does this work? And you guys sit down at a
25 table for a few hours and figure that out. You got one

1 month to do that. And -- and I'm going to set a follow up
2 date right now for us to do what we were supposed to do
3 today if you fail to do this. And the motion, but what I
4 was going to do, I had this lengthy agenda, well, who the
5 hell is this and who's that? Excuse me. And what are these
6 relationships? And what happened to rule 20? And what
7 happened to rule 24? What are you doing with somebody who
8 is not named? And why D&K? We're not going to do any of
9 that right now. But I am going to do it vigorously if you
10 guys don't get off your collective keisters and get this
11 thing done. And I wouldn't be so -- if this were a
12 different kind of a case and -- and the environment were
13 different, I wouldn't be so animated, but it's not. And I'm
14 going to actually send an order that you must send to your
15 clients, not that you need to, but I want your clients to
16 know why I'm doing this. And I'm going to order you to pass
17 the order along to your clients. Um, so here, let's see.
18 Um, Michelle, how about sometime sixteenth, seventeenth,
19 eighteenth, or the next week of April for the follow-up
20 session where we, um, set, clean up these pleadings, figure
21 out who really should be in this case and by what vehicle.
22 And we're not going to play Jardice versus Jardice. We're
23 not going to play 19th century pleading. We're going to do
24 this by common sense. We're going to get the people in here
25 who need to be in here and we are going to move the case.

1 And we're not going to do any six months of discovery about
2 anything. So, any way, sometime during the week of -- not
3 before April 16 -- the week that -- those three days of the
4 next week.

5 Let me ask you folks. I want this to be realistic
6 so I'm going to change my mind. Twenty-third. April 23.
7 Can you guys --

8 **MS. CAVERLY:** Yes, your Honor.

9 **MS. PUM:** Yes, your Honor.

10 **THE COURT:** April 23, 1:30 in the afternoon for
11 the purposes we were supposed to be here today.

12 **THE CLERK:** There's something at 1:30.

13 **THE COURT:** Sorry. My clerk's telling me that's
14 not going to work.

15 **THE CLERK:** If we can do three o'clock.

16 **THE COURT:** Three o'clock that day. And Ms.
17 Caverly, you can continue to appear by phone because I would
18 like to save your client that money.

19 **MS. CAVERLY:** Thank you, your Honor.

20 **THE COURT:** Don't even do what I told you to do
21 about the protective order. Don't even spend that money.
22 Do this. And then after, if you fail in this business, then
23 we'll do the protective order and sometime in the latter
24 part of April.

25 **MR. GEBHARDT:** Your Honor --

1 **THE COURT:** Oh, wait. Wait. Sorry. What I just
2 say screw up your ability to move things back and forth
3 between yourselves?

4 **MS. PUM:** No. But I have --

5 **THE COURT:** Okay. I'm entering a blanket
6 protective order right now that protects all the stuff that
7 you exchange right now, all of it, through the end of April.

8 **MR. GEBHARDT:** Well, that's what I was going to
9 ask you about. Instead of the twenty-third, can you do it
10 on the thirtieth? And the reason is I'm starting trial
11 Monday. It shouldn't interfere with my ability --

12 **THE COURT:** Okay. The thirtieth is okay, but
13 no -- nothing after that.

14 **MR. GEBHARDT:** If it's okay with the court.

15 **THE COURT:** Nothing after that. I don't have any
16 sense of hey, we're stumbling. We got some of this and
17 that.

18 **MS. PUM:** Your Honor, may I make one additional
19 request of that order?

20 **THE COURT:** Sure.

21 **MS. PUM:** Could we direct FamilyMeds Group and
22 FamilyMeds, Inc. not to dissipate their assets in the
23 next -- over the next thirty days?

24 **THE COURT:** Is there some risk that Family --

25 **MR. GEBHARDT:** I -- I didn't hear about it until

1 just now. FamilyMeds Group is the entity that's a holding
2 company and they sold off all their retail assets. I don't
3 think there's any danger of that kind of thing. But I don't
4 believe that this -- this kind of a request is appropriate
5 at this time without some kind of a showing letter.

6 **THE COURT:** That's probably right. But as a favor
7 to the court, communicate to your clients that there's
8 concern by McKesson that there won't be any money left to
9 pay. And that -- and that if, after the case, all the dust
10 settles in the case, there isn't any money left to pay, then
11 the court might have to make inquiry about why. So just
12 tell them that.

13 **MR. GEBHARDT:** That would be fine. And -- and I
14 believe they're protected if there was any, which there
15 won't be. But let me ask the court, just you want us to get
16 together, Ms. Pum and me, and possibly Ms. Caverly, with
17 our, as I -- I told the court, I've hired a man who is an
18 expert from the Crowell Company. And he's -- they deal in
19 these massive deals. And I'm going to recommend that he be
20 made available to talk about what -- what we need because,
21 just for the court's edification, yes, we had this computer
22 program called SOM that's set forth what the prices were but
23 what we're -- what we want to know is what -- what was the
24 basis for setting those prices and that requires
25 computerese. And we're going to, I can guarantee, in

1 listening to the court, we're going to meet and we're going
2 to meet in good faith and more than one time, if necessary,
3 to find out what we need. But we may be coming back here to
4 tell the court this is what we need in order to -- to find
5 out whether the prices have been set appropriately. That's
6 what I'm thinking then.

7 **THE COURT:** Well, okay. Two sort of thoughts
8 about that. They -- they, what I would envision happening
9 in this informal process. And, by the way, I'm going to
10 protect all of your motion and discovery rights independent
11 of this process.

12 **MR. GEBHARDT:** Okay.

13 **THE COURT:** So, but what I would envision
14 happening is McKesson saying, hey, we think, and we claimed
15 you owe us seven and a quarter. Here is our computer guy or
16 whoever the person is, and here's why. Boom, boom, boom,
17 boom, boom. And we got all of these little transactions and
18 all of this piece of paper. Here's why. And -- and -- and
19 here's why the, not overwhelmingly, certainly not
20 transaction by transaction, specific level, but here's why
21 the prices are appropriate. Here's the setting in which we
22 set prices. Here's -- here's our little protocol and this
23 is what we set. Boom. That's it.

24 So, and then you guys say, well, we don't
25 understand. Or -- or what about this and what about that?

1 You can't just say, we don't owe it. You got to have -- you
2 got to have something in there. But the first thing is they
3 explain so you have a basis for understanding and you may
4 well have this already, but they bring a very computer
5 information specific knowledgeable person in there about
6 this -- this specific kind of billing.

7 **MR. GEBHARDT:** Okay.

8 **THE COURT:** And you bring in whoever you want and
9 they explain to you. If you understand, you pay. If you,
10 that is assuming you understand and it looks right, you pay.
11 If you understand, and what they're saying and no, that's
12 wrong. You explain why it's wrong. You can't just say, oh,
13 this doesn't feel good. Why is it wrong? So their person
14 can listen and say oh, oh, I hear that argument but it's not
15 correct for this reason, or oh, gee, you got some point
16 there. That's the way it is. That you just talk like
17 you're real people with the informational expertise that you
18 need.

19 **MR. GEBHARDT:** That's all right. I understand it.
20 And so they understand it is we should -- I mean if the
21 lawyers get together, I don't think anything's going to
22 happen. We got to have people.

23 **THE COURT:** Real people.

24 **MR. GEBHARDT:** We are real people. It's just the
25 computer experts. We need computer experts to get together

1 and talk on a different level than us about what was used to
2 set the prices, what we claim should have been used and
3 maybe have the computer people get together to agree on what
4 was either -- what the proper price was or what we might
5 need in order to establish what the proper price is.

6 **THE COURT:** Okay. That's fair enough. The
7 only -- my only concern is it's not -- it's not as obvious
8 to me that it's primarily a computer person. An IT person.
9 It is someone who understands certainly the computer
10 environment in which this stuff is done, but someone who
11 understands how the billing system works. What -- what
12 protocols are followed in the billing process, and what
13 rules apply within McKesson and under the contracts that
14 attach here. What rules apply to the pricing process.

15 So, for example, at what junctures with respect to
16 what kinds of transactions for what kinds of drugs or
17 whatever they are, medicines, the price moves this way or
18 that way. That's the kind of person I'm talking about.

19 **MR. GEBHARDT:** Yeah.

20 **THE COURT:** Okay.

21 **MR. GEBHARDT:** Okay. I believe I understand you.

22 **THE COURT:** Okay. So I'll see you guys on the
23 thirtieth. You can appear by phone, too, if you want to.
24 You're from San Diego?

25 **MS. PUM:** I am, your Honor.

1 **THE COURT:** Okay. You can come up, too. I don't
2 care. If you get this done before this, send me a piece of
3 paper that says we're done. And then I'll, you know,
4 eventually you can dismiss the case. The whole case. If
5 you're not done, send me some paper by -- by Monday. Let's
6 see. Monday, the twenty-eighth at noon I got to receive it
7 that says what's going on.

8 **MS. PUM:** Your Honor, what I'm concerned about
9 here is you've now given the Defendant another six weeks to
10 not pay up. And who knows where the money is going to go
11 over that six weeks. But now they're going on a fishing
12 expedition to see what they might be able to find out.
13 There is absolutely no downside to them dragging their feet
14 for the next six weeks.

15 **THE COURT:** Yes, there is. Yes, there is because
16 I'm going to push this so fast they're going to have to put
17 five lawyers on it and you're going to get the same place
18 you would have gotten today but you're going to get it in a
19 more compact way. That's all.

20 **MS. PUM:** Your Honor, it was our intention to
21 bring a motion for summary judgment on the issue of the
22 contract and the language in the contract. I would like to
23 go, be able to go forward and do that, your Honor.

24 **THE COURT:** You can't. You can file a motion
25 on -- is there a thirty-first? No. On -- on the first.

1 **MS. PUM:** But, your Honor, then that means that
2 we've now given them six weeks and another 35 days in order
3 to not pay us, your Honor.

4 **THE COURT:** Well, what, you know what, the motion
5 on the contract may be resolved. And I don't know,
6 obviously, one direction or another, but it's pretty darn
7 unlikely that it will result in a final movement of money
8 from one side of the case to the other. Because there --
9 there are probably going to be arguments about offsets and
10 defenses. Yeah, that's what the contract means and blah,
11 blah, blah. But don't make us pay that right now because
12 we've been screwed by all these overcharges or whatever. So
13 I don't think it's going to hurt you. But I'm promising
14 you, this is going to go very compactly if you guys don't
15 get this done. That's all.

16 **MR. GEBHARDT:** Thank you, your Honor.

17 **MR. KENEFICK:** Your Honor, what time on the
18 thirtieth?

19 **THE COURT:** Oh, I'm sorry. The thirtieth. I'm
20 sorry. I'm sorry.

21 **MR. GEBHARDT:** Three o'clock.

22 **THE COURT:** Three o'clock.

23 **MR. KENEFICK:** Thank you, your Honor.

24 **MS. PUM:** Thank you, your Honor.

25 **MS. CAVERLY:** Thank you, your Honor.

1 (Whereupon, at 3:35 p.m. the proceedings concluded.)

2 COURT REPORTER'S CERTIFICATE

3 I, STARR A. WILSON, CSR NO. 2462, United States
4 District Court, Northern District of California, do hereby
5 certify that the foregoing is a correct transcript from the
6 record of proceedings in the above-entitled matter.

7 I certify that the transcript fees and format
8 comply with those prescribed by the Court and Judicial
9 Conference of the United States.

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12 STARR A. WILSON, CSR NO. 2462
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